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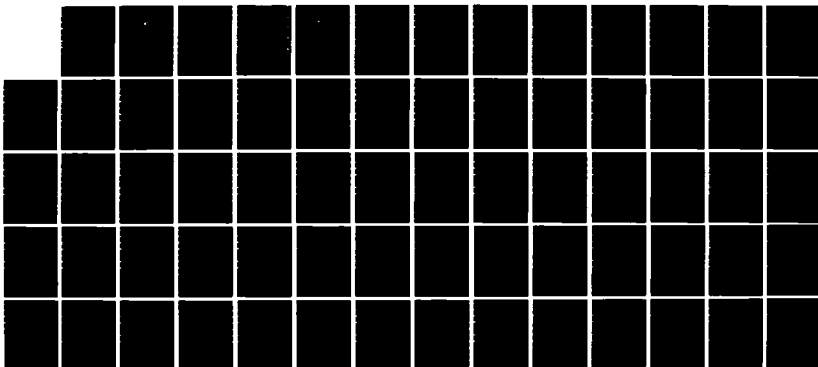
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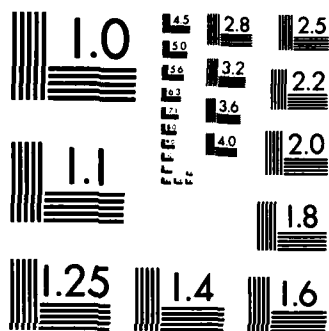
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AIR COMMAND AND STAFF COLLEGE

STUDENT REPORT

LEGISLATING COMPETITIVE ACQUISITION;
THE IMPACT OF PUBLIC LAWS 98-72, 98-369
AND 98-577 ON THE SPACE DIVISION
ACQUISITION PROCESS

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REPORT NUMBER 85-0575

TITLE LEGISLATING COMPETITIVE ACQUISITION:
THE IMPACT OF PUBLIC LAWS 98-72, 98-369, AND 98-577
ON THE SPACE DIVISION ACQUISITION PROCESS

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Submitted to the faculty in partial fulfillment of
requirements for graduation.

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PREFACE

This research project was conceived as an independent study on competitive acquisition. The focus of the application of this study is Space Division, Deputy for Contracting. The analyses are thus heavily tailored to the review and implementation of competition initiatives within the Space Division frame of reference. While reviewing current changes to the acquisition process enacted by Congress, the President and DOD, the author was alarmed at the trend in limiting acquisition manager authority to independently formulate a business strategy for his/her program. The schedule and cost drivers within programs are presumed by higher headquarters in an effort to challenge the acquisition manager's decision to compete or not compete a programmed acquisition. While the new regulations create delays and additional administrative costs to the government, the perturbations are manageable and should be anticipated by knowledgeable contracting officers and acquisition managers. This paper takes a first look at several new laws enacted to encourage competitive acquisition, and superimposes the laws on the Space Division acquisition process.

This study could not have been completed without the advice and assistance of numerous specialists in the acquisition career field. The author wishes to gratefully acknowledge Major Stu Johnson (ACSC/EDX) for his constructive critique and guidance. Col Martin L. Kaufman (SD/PM), also played a strong hand in molding this research project, and suggesting alternative sources for data. Finally, I would like to acknowledge Maj Jim Weber, AFBRMC, who assisted with tailoring the project and suggested that I interface with Mr Tony Deluca (HQ AFSC/PMT), LtCol Xander (USAF/RDCL), and others who contributed to the conceptual ideas presented as part of this project.

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ABOUT THE AUTHOR

Major Walter M. Crandall III was awarded a Baccalaureate in International Relations at the University of New Hampshire in 1971, and a Masters Degree in Business Administration at Southern Illinois University in 1975. He was commissioned in 1971 via the AFROTC program, and assigned to undergraduate pilot training at Craig AFB, Alabama. Subsequently, he flew C-141 aircraft at McGuire Air Force Base. He attended Squadron Officer School in 1975. In 1976, he was assigned to the Pacific Airlift Control Center at Clark Air Base, Republic of Philippines as an Air Operations Officer. While stationed at Clark Air Base, he flew T-33's as a "Faker" for the 3d Tactical Fighter Wing, Pacific Air Force. Following this assignment, he was selected for Education-With-Industry at McDonnell Douglas Corporation in Long Beach and Huntington Beach, California. In 1979, he was assigned to Headquarters, Space Division, Air Force Systems Command, as a contracting officer in the NAVSTAR, Global Positioning System (GPS) Program Office. He developed an intense interest in competitive acquisition through planning and managing GPS business strategies. He was an active member of the National Contract Management Association (NCMA), and a frequent NCMA guest lecturer on "source selection" procedures at Space Division. His most recent assignment was flying C-141B's with the 53d Military Airlift Squadron "Blackjacks", where he served as chief pilot and standardization-evaluation pilot. He has logged over 3000 flying hours in nine years of flying duty assignments. In 1984, Major Crandall was selected to attend Air Command and Staff College at Maxwell AFB. He has also completed Air Command and Staff College and National Security Management courses by correspondence.

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EXECUTIVE SUMMARY

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REPORT NUMBER 85-0575

AUTHOR(S) MAJOR WALTER M. CRANDALL III, USAF

TITLE LEGISLATING COMPETITIVE ACQUISITION:
THE IMPACT OF PUBLIC LAWS 98-72, 98-369, AND 98-577
ON THE SPACE DIVISION ACQUISITION PROCESS

I. Purpose: The purpose of this study was to review three recent legislative enactments: Public Laws 98-72, amendment to the Small Business Act; 98-369, the Competition in Contracting Act of 1984; and 98-577, the Small Business and Federal Procurement Competition Enhancement Act of 1984, to determine the impact of these laws on the Space Division (AFSC) acquisition process.

II. Problem: There is an increasing trend toward legislative activism to resolve deep-rooted problems in the DoD acquisition process. Increasing competitive acquisition is one solution sought by legislators interested in reforming the DoD acquisition process. To effect this solution, Congress enacted three laws designed to increase competitive DoD acquisition. While debate rages over whether competitive acquisition produces more benefit than cost, competition has become the "law of the land". To comply with new legislation, and to avoid embarrassment and expense to the government, contracting officers and acquisition managers should seek to enhance their knowledge and understanding of the impact of new laws on competitive acquisition.

CONTINUED

III. Discussion of the Research: Through enactment of Public Law 98-369, Congress declared a statutory preference for "full and open competition". The intent of Public Laws 98-72, 369, and 577 is to control DoD acquisition procedures to limit noncompetitive acquisitions. The policy implications of the new laws span the weapons system acquisition process. Contracting officers and acquisition managers charged with grassroots implementation of competition policy should concentrate on key decision points within the acquisition process that provide opportunities for creating and improving competitive acquisition strategies. The key decision points identified in the SD acquisition process are the Business Strategy Panel, Contract Strategy Paper, Acquisition Plan, Draft Request For Proposal, Solicitation Review Panel, Synopsis, Request For Proposal, Pre-Proposal Conference, and Source Selection Process. Another, equally critical influence on competitive acquisition is the acquisition philosophy, or methods used in acquisition planning--such as "second sourcing"--which affect opportunities for future competition. These key decision points are directly or indirectly affected by the new laws.

V. Conclusions: From the research, five conclusions were developed:

1. Each major weapons system acquisition is unique. To effectively implement new laws promoting competitive acquisition, contracting officers and acquisition managers should concentrate on key decision points in the acquisition process.

2. The statutory preference for competition does not replace the need for sound business judgment in developing an acquisition strategy. Decision-makers must have the tools to make predictions on the cost and benefit of competition.

3. The key to reforming the DoD acquisition process is in the line organization. To effectively implement new policies on competitive acquisition, contracting officers and acquisition managers must be trained and motivated to build policy objectives into acquisition strategies.

4. The three new laws discussed by this research report are the "tip of the iceberg" for legislative "reform" of DoD

proposal. In addition to provisions for publishing procurements, FL 98-72 specified approval levels for noncompetitive contract awards. This section of FL 98-72 was superseded by substantially the same provisions written into FL 98-577. A more detailed synopsis of FL 98-72 is provided in Appendix C.

The Competition in Contracting Act of 1984: FL 98-369

The Competition in Contracting Act of 1984 (FL 98-369) was enacted as Title VII of the Deficit Reduction and Tax Reform Act of 1984 (authorization act). The Act amends the Federal Property and Administrative Services Act of 1949, the Armed Services Procurement Act (10 USC 2304), the Office of Federal Procurement Policy Act, and the Budget and Accounting Act.

The intent of the law is to increase the use of competition in Government contracting and to impose more stringent restrictions on the award of noncompetitive--sole source--contracts. The Act's most sweeping change is that Government agencies are required to use competitive procedures, whether by "inviting sealed bids or requesting competitive proposals," unless a specified statutory exception allowing the use of noncompetitive procedures is met. A key concept addressed in the Act is that "competitive proposal procedures" are placed on a par with "sealed bid procedures" in meeting competition goals. The exceptions to competitive acquisition are limited, and the contracting officer's justification for contract award using other than competitive procedures must be approved by a higher level according to the value of the contract.

To limit options for noncompetitive procurement procedures, the Act details the circumstances and conditions under which other-than-competitive procedures may be used. The Act further sets forth definitions for "full and open competition," and "responsible source," and directs the head of each executive agency to appoint an advocate for competition who will review the procurement activities of the agency. The charter of the competition advocate is to "challenge barriers to competition in the procurement of property and services by the agency." (13:2741) For a more detailed synopsis of the Act, see Appendix D.

The Competition in Contracting Act sets the stage for future legislative activism on reforming government contracting procedures and practices. Like FL 98-72, the legislative history of FL 98-369 had its roots in debates and Congressional committee conferences going back several years. At the time the law was enacted, most of the acquisition practices provided by the law had been established by DoD Directives and Air Force regulations.

scrutiny and activism on DoD acquisition procedures can be expected to continue. On submitting PL 98-577 for execution, the chairman of the Senate Small Business Committee, Senator Lowell P. Weicker Jr., made the following comment:

When coupled with the reforms already adopted by the Congress in the Department of Defense Authorization Act, it will be clear from this day forward, that the Congress expects active competition for Federal procurement will be the rule, not the exception... More importantly, it will be clear to the taxpayers of this country that Congress is serious about reversing the existing, and all too prevalent, abuses in the contracting process. (16:13624)

COMPETITION: A SUMMARY OF CURRENT CHANGES

This discussion summarizes procedural and substantive changes introduced into the acquisition process by three recent legislative actions: amendment of the "Small Business Act" (PL 98-72); the "Competition in Contracting Act of 1984" (PL 98-369); and the "Small Business and Federal Procurement Competition Enhancement Act of 1984" (PL 98-577). These legislative actions direct sweeping changes in federal acquisition planning and procedures. These procedures are synopsized below under the subheading of the respective acts.

Amendment to the Small Business Act: PL 98-72

Public Law 98-72, which amends 15 USC 637, the Small Business Act section 8(e), was the precedent to legislation enacted in 1984 emphasizing competition in government acquisition. The law requires contracting officers to publish proposed procurement actions in the Commerce Business Daily (CBD) "immediately after the necessity for the procurement is established." (14:97 STAT. 403) The Act changes the Federal Acquisition Regulation (FAR), and implementing documents, to lengthen the minimum response time between publishing the procurement and issuing a request for proposal. The Act further reduces dollar thresholds above which procurements must be published, and specifies exceptions under which publishing a procurement is not required. In the event exceptions to publishing the procurement are invoked by a contracting officer, the contract must be approved by the head of the procuring activity (e.g., Commander, AFSC) or his deputy before negotiation or award of the contract. The intent of this law is to improve small business access to Federal procurement information by limiting procurements that are not publicized, and providing sufficient time for businesses to request additional information on the procurement in order to submit a

POLITICAL ACTIVISM
THE PHILOSOPHY MOTIVATING CHANGE

Nearly all defense programs undergo budgeting action by the executive and legislative branches on an annual basis. This is in contrast to the programs of most other Federal agencies where the budget process is largely one of approving the continued funding of programs already in being. Also, the proportion of social programs and other "uncontrollable" expenditures has grown relative to defense expenditures. As a result, more than 60 percent of the "controllable" expenditures in the entire Federal Budget are in the area of National Defense. (5:14) Because Congress and the Executive Department are jointly responsible for the budget, both share an interest in managing the controllable expenses with utmost efficiency.

Because the notion of competition tenders the possibility of "getting a better product at a reduced price," thus reducing overall DoD acquisition costs (a portion of the "controllable" budget), it follows that Congress and the Executive department would actively promote increased competitive DoD acquisition. Unfortunately, Congress has consistently demonstrated a lack of understanding of the fundamental aspects of DoD acquisition. In their haste to legislate new requirements limiting opportunities for non-competitive DoD business strategies, Congress has opened a Pandora's box of legislation which limits the program manager's business options and dramatically increases the administrative burden. Major General Joseph H. Connolly, the AF deputy director, acquisition management, of the Defense Logistics Agency, voiced this concern:

There are about 4,000 statutes in effect that have an impact on federal procurement. And there are more on the way. At this time, DFPP is tracking more than 75 pending bills that will affect procurement. Their experience is that this number is growing by 10 percent to 15 percent yearly. (7:18)

Congressional pressure to legislate DoD acquisition reform became so great that, in September 1984, an Air Force and Army panel composed of the Commanders of Air Force Systems Command, Air Force Logistics Command, and Army Material Command appeared before the Defense Procurement Task Force of the Senate Armed Services Committee to "...urge the lawmakers to rescind some of their recent acquisition laws and to call a moratorium on new legislation in this area." (6:68) Despite the panel's testimony--that current "Acquisition Improvement Programs" are working and gaining momentum--Congress passed two additional broad directives focused on reforming the acquisition process: The "Competition In Contracting Act of 1984" (PL 98-369), and the "Small Business and Federal Procurement Competition Enhancement Act of 1984" (PL 98-577). Continued Congressional

Greer and Liao admit that their empirical research is incomplete in quantifying the degree of correlation of contractor price to "other factors." Their efforts do, however, expose serious methodological weaknesses in previous competition theory, such as the "theoretical optimum curve" proposed by Dr. Jacques Gansler. (8:45) The results of previous studies are the foundation of arguments that competition in DoD acquisition will reduce costs. The study by Greer and Liao suggests the opposite.

In addition to the uncertainty that real cost saving will result from a proposed competitive acquisition strategy, DoD acquisition managers face potential disaster should contractors adopt a strategy of "buying in."

Where the contractor intends to shift the amount of underpricing back to the the government during contract performance, the practice is suspect and is known as "buying-in." The FAR describes the practice of buying in under the heading of "Improper Business Practices" as submitting an offer below anticipated costs expecting to a) increase the contract amount after the award (e.g., through unnecessary or excessively priced change orders) or b) receive follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract. But it should be recognized that in the game of federal procurement, there may always be an expectation of recouping losses through lucrative change orders or follow-on contracts with supranormal profits despite these FAR regulations which have been formulated to prevent this from happening. (12:6)

Because the DoD is complicit in the contract change and follow-on business, the inherent danger of a contractor strategy of "buying in" cannot be avoided completely by any legal or regulatory device. The opportunities for profitable "buying in" may be reduced by sustaining competition throughout the life of the program, which, as Mr. Deluca pointed out--"and that costs money." (9:17) The proposed methods for sustained competition are dual or second sourcing, and parallel development "...whether accomplished through joint teaming, leader/follower, directed subcontracts, or otherwise." (12:7)

To summarize the debate on the benefit of competition, the opportunity to win or lose in terms of achieving a lower cost or better product, is at best a gamble. Yet Congress, and informed Government officials are intensely interested in promoting competition, and severely limiting noncompetitive DoD acquisitions.

ON THE BENEFIT OF COMPETITIVE ACQUISITION

A debate rages in literary and legislative circles over the benefit of competition. The debate centers on the axiom that competition educes a better product at a lower price. As Secretary of Defense Caspar W. Weinberger elucidated in the Report to the Congress on the Fiscal Year 1985 Budget:

The advantages of competition are well known. Competition can keep costs down, improve quality, speed innovation, and strengthen the industrial base. In view of these benefits, we have launched a concerted effort throughout the Department aimed at strengthening competition. (31:103)

While the parties generally agree on the axiom in principle, there are structural and procedural inhibitors to competition in the DoD acquisition process which reduce or prevent competition from obtaining predictable benefit. A DoD high-level working group recently cited several of these procedural and policy inhibitors to competition grouped within four major functional disciplines: technical and engineering; program management; comptroller and financial; and supply and requirements (detailed in Appendix B). (17:1) The inhibitors to competition cited by the working group militate against a competitive acquisition strategy. In view of these impediments, does competition offset the additional funds required to overcome the barriers to competition and to create and maintain a competitive market for supplies? Recently, some theorists are reevaluating the cost effectiveness of competition. Willis R. Greer Jr., and Shu S. Liao, professors in the accounting department of the Naval Postgraduate School, suggest that the business determinants which most strongly affect contractor pricing activity (and the magnitude of expected savings from competition) are not associated with the contractor's perception of competitive factors, but can be more closely correlated as a function of other factors. (10:44) The other factors suggested by Greer and Liao to be the determinants of the savings potential of a competitive strategy are the contractor's perceived profitability of government contracts, the state of the target industry's capacity utilization, general business conditions as a function of the trend in demand for the company's product line, and the degree to which common subcontractors will be used. (10:44)

Research has documented cases where competition has brought about the expected price reductions, but has produced others that have resulted in unexpected losses. The major question still seems to be when savings will result from introducing competition, and when losses are more likely to occur. (10:44)

competition artificially--and that costs money. (9:17)

Mr. DeLuca's comment is a valuable insight, not only as an operational definition of competition, but also a commentary on the market forces that act to inhibit DoD competitive acquisition. The paradox for competition in the DoD stems, in part, from the Armed Services Procurement Act of 1947, which remains the fundamental substantive authority for DoD acquisitions. This Act, before amendment by the Competition in Contracting Act of 1984, declared that the government's interests were best served when "military supplies and services are procured on a competitive basis." (2:80) In defining competitive procedures, the Act identified two methods of acquisition: "formal advertising," and "negotiation" (negotiation includes sole source and competitive negotiations). (2:95) This distinction led to the common misconception that formal advertising is competition, and negotiation is not. Acquisition by formal advertising is generally inapplicable to major systems acquisition because the procedure "depends entirely upon the existence of real competition among bidders," and "relies wholly upon competitive pressure to obtain fair and reasonable prices." (2:92) The essential ingredients for this type of competition, precise design and performance specifications and a market containing many buyers and sellers, rarely exists for DoD acquisitions. (2:95) In lieu of "formal advertising," most major systems acquisition is accomplished through competitive negotiation. The Office of Federal Procurement Policy cites,

... the basis of competition is in ideas, designs and technology rather than short-range price advantage. Examples are research and development, new products and military systems or complex services. In this type of competition, the agency may still be considering what its performance should be, and tradeoffs may be made between performance and cost. (30:33)

To focus policy initiatives aimed at reforming DoD competitive acquisition procedures, Congress adopted a new operational definition of competition. The Competition in Contracting Act of 1984 states, "the term 'full and open competition', when used with respect to a procurement, means that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement." (13:2725) This broad definition adopted by Congress signals intent by the legislative body to alleviate confusion on the concept of competition and competitive procedures. The definition does not, by itself, "lock in" procedures to increase competition which may prove more costly than alternative acquisition strategies. Through legislation, however, Congress has acted to limit opportunities to select noncompetitive acquisition strategies regardless of the circumstances.

including threat definition, weapons concept, risk, schedule, readiness, and affordability goals. A specific "not-to-exceed" dollar threshold is established to carry the program through the second decision point. The goals to be achieved and the timing of the second decision review point are determined at the first review. (18:4)

The second decision point, "Program Go-Ahead," is selected to coincide with the system preliminary design review. This review considers the full scale development and production, the program plan for test and evaluation, support and readiness, and the total acquisition strategy. The production program review is delegated to the Service Secretary unless the Secretary of Defense directs major changes in the program. (18:5)

Overall, the Secretary of Defense establishes weapon system acquisition policy, and maintains oversight through the DSARC process. The day-to-day management of the program is decentralized to allow the program manager to exercise business judgment. Throughout the process, management emphasizes developing a system that is technologically feasible, operationally practicable, economically affordable and that meets the essential mission need with respect to the threat. Encompassed in this review process, is the structuring of the acquisition strategy and the contractual plan to achieve acquisition policy objectives. Among the policy objectives is the emphasis on competitive acquisition. (1:77)

TOWARD DEFINING COMPETITIVE ACQUISITION

Before considering the current interest in competitive acquisition, it is important to understand the basic operational concept of competition. Mr. Tony Deluca, the AFSC Competition Advocate, provided an excellent summary definition of competition in a recent interview with Government Executive:

Competition... is simply when you have two guys going head to head to satisfy your request whether the procurement is a formal advertising one or a negotiation. In the commercial, free enterprise marketplace, competition is the natural result of a whole army of different buyers all individually wanting some variety or other of a generic class of product or service.

By contrast, for most of what Defense buys in terms of dollars--certainly for nearly all of its high-ticket, high visibility weapon systems, weapons delivery systems and major subsystems--Defense is a monopsony, i.e. a single military Department customer with, often, only a handful (sometimes only one) potential, qualified, and willing-to-bid suppliers. So... we often have to create

Chapter Two

A FRAMEWORK FOR UNDERSTANDING CURRENT TRENDS IN COMPETITIVE ACQUISITION

INTRODUCTION

This chapter presents a brief overview of the DoD acquisition process and competitive acquisition. The overview is followed by an assessment of current competitive acquisition theory, and a discussion of legislative pressure to increase competition in the DoD acquisition process. The discussion of legislative interest leads to a survey of three recent landmark laws prescribing competition for DoD acquisitions. These three enactments are Public Law (PL) 98-72, which amends the Small Business Act, PL 98-369, the "Competition In Contracting Act of 1984," and PL 98-577, the "Small Business and Federal Procurement Reform Act of 1984."

THE ACQUISITION PROCESS

The DoD systems acquisition process is complex and dynamic in contrast to a simple, static purchasing procedure. This is expected in view of the broad range of requirements confronting the Defense Department, and the call for flexible planning, option preservation, and adaptive management. This discussion will cover the major DoD management review milestones in the series of events as a major weapons system moves from the Statement Of Needs (SON) through system deployment. A major weapons system is defined in DoD Instruction 5000.2, Major System Acquisition Procedures, as a program with anticipated costs of \$ 200 million for research and development or \$1 billion in production. Other weapons systems acquisitions are subject to similar management reviews at lower levels within the respective services.

The forum for review of major weapons system acquisitions is the Defense System Acquisition Review Council (DSARC). Under the changes instituted by Deputy Secretary of Defense Frank C. Carlucci in 1981, the series of DSARC management reviews has been reduced to two. The first decision point is "requirements validation." At this juncture, the Secretary of Defense makes a full review and gives approval for major program initiation,

5. This model was tested for sensitivity to the substantive and procedural changes imposed by new laws affecting competitive acquisition.
6. The impact of new legislation is assessed against key decision processes in the Space Division acquisition process.

To develop background for the conclusions and recommendations of this report, the analysis begins with a brief overview of the DoD acquisition process. The overview is followed by an assessment of theoretical studies on competitive acquisition and the significance of legislative pressure to reform DoD acquisition procedures. This introduction provides a framework for analyzing the effect of new legislation on the SD acquisition process.

ORGANIZATION OF THE STUDY

This research report is organized into five chapters. Chapter one introduces the problem, presents the questions the study will focus upon, defines assumptions and scope, establishes a working glossary, and outlines the research methodology. Chapter two presents an overview of the trend toward legislative reform of DoD weapons system acquisition procedures, and surveys three recent legislative enactments declaring statutory preference for competitive acquisition. Chapter three discusses the practice of competitive acquisition in the context of an Air Force Systems Command "buying division", Space Division. Chapter four presents an assessment of the impact of new legislation on key decision points in the Space Division acquisition process. Chapter five presents conclusions derived from the research, and sets forth recommendations for competition policy development and implementation.

2. That information provided by interview and discussion with acquisition managers is accurate and honest.
3. That specific actions for Space Division can be developed from the generalized guidance contained in Public Laws, Executive Orders, and DoD, AF, and AFSC implementing guidance.
4. That general conclusions can be extrapolated from the responsiveness/sensitivity of the Space Division acquisition process to new initiatives designed to encourage competitive acquisition.

The above assumptions limited the results of this research report as follows: first, the impact of higher level initiatives in the acquisition process were interpolated to the Space Division acquisition process; second, normative conclusions and recommendations on influencing future competition policy are extrapolated from the Space Division competitive acquisition experience; finally, the research is targeted to benefit Space Division acquisition managers and contracting officers, and may not be applicable to other agencies.

DEFINITION OF TERMS

A working glossary is provided in Appendix A. The glossary is not intended to be a comprehensive dictionary on acquisition; however, a review of the Appendix before reading this research report will enhance understanding of the terminology used in the discussion of competitive acquisition.

RESEARCH METHODOLOGY

The methodology adopted for this research report is primarily descriptive. To answer the questions presented by this study, the following approach was adopted:

1. A survey of literature relating to current and proposed legislative initiatives to increase the proportion of competitive acquisitions was conducted.
2. The sources were reviewed to identify substantive and procedural changes imposed on the overall acquisition process.
3. The Space Division acquisition process was then examined through reference to current SD directives and interviews with SD organizations involved with planning and managing competitive acquisitions.
4. Through examination of the SD acquisition process, a generalized model of events and activities implicit in acquisition planning was developed.

conviction is inaccurate, and is more reflective of the inadequacy of empirical studies of competition in DoD acquisition. (10:38) Evidence indicates that DoD has failed to do its homework in defending competitive as well as noncompetitive business strategies. (10:44) Additionally, legislative pressure for acquisition reform continues because DoD has not developed a convincing role in guiding structural and functional policy changes to repair complex acquisition problems. (6:68)

SCOPE OF RESEARCH

The conclusions and recommendations produced by this research report are limited by the scope of the study. The following are limitations to the scope of research.

1. No empirical study of the cost-effectiveness of current or proposed legislation and directives designed to encourage competitive acquisition was undertaken.
2. No empirical study of the cost-effectiveness of competitive versus non-competitive acquisition was undertaken.
3. No empirical study of the relative cost-effectiveness of alternative competition strategies was conducted.
4. This study develops conclusions and recommendations based on sensitivity of the Space Division (AFSC) acquisition process to current and proposed competition-enhancing legislation. These conclusions and recommendations may not be generalized to other functional or structural segments of the DoD acquisition process.
5. This study is further limited to major weapons system acquisition within DoD, and does not address problems with competition in base-level or logistic center (maintenance spares) acquisition.
6. The data presented in this research report are derived from four principle sources: (a) literature on the topic of competitive weapons system acquisition, (b) government documents related to weapons system acquisition procedures and policy, (c) personal interviews, and (d) personal experience with planning and implementing competitive acquisitions as an Air Force acquisition manager.

ASSUMPTIONS AND LIMITATIONS

In conducting the research for this report, the following assumptions were made:

1. That the documents and literature reviewed are current and accurate.

QUESTIONS TO BE ANSWERED

The purpose of this study derives from the following objective questions:

1. What are the current procedural and substantive changes to the acquisition process initiated by Congress.
2. How will new initiatives be implemented within the framework of the system program office at Space Division, Air Force Systems Command?
3. Will these new initiatives precipitate changes in the generalized Space Division acquisition process?

IMPORTANCE

Fromulgaion of Executive Order 12352 by President Reagan on 17 March 1982, set the stage for dynamic changes within the acquisition community on a rising tide of Congressional and public interest in conserving defense expenditures. President Reagan's remarks directed,

By the authority vested in me as President by the constitution and laws of the United States of America, and in order to ensure effective and efficient spending of public funds through fundamental reforms in Government procurement, it is hereby ordered as follows: Section 1. To make procurement more effective in support of mission accomplishment, the heads of executive agencies engaged in the procurement of products and services from the private sector shall: ...Establish criteria for enhancing effective competition and limiting noncompetitive actions. These criteria shall seek to improve competition by such actions as eliminating unnecessary Government specifications and simplifying those that must be retained, expanding the purchase of available commercial goods and services, and, where practical, using functionally-oriented specifications or otherwise describing Government needs so as to permit greater latitude for private sector response.... (29:333)

The Executive Order highlighted competitive weapons systems acquisition. While the President's policy directive was general in substance, it reflects the focus of initiatives promoting competition. Executive Order 12352 was succeeded by several Congressional initiatives designed to limit noncompetitive acquisition and declare a statutory preference for competitive procedures as opposed to "sole source" procurement. The Congressional initiatives reflect a conviction by a few congressmen that competition can result in savings ... of 10 to 30 per cent... of the DoD budget. (8:30) and (31:22) This

Chapter One

THE PROBLEM

INTRODUCTION

This study joins national competition policy in major weapons systems acquisition to implementation of the policy at the system program office level at Space Division, Air Force Systems Command. The tone of this study is exemplified in a recent statement by Mr Tony DeLuca, the AFSC Competition Advocate: "Utilizing Competition as a tool... is nothing new. And it still is, without doubt, the preferred method of acquisition-- but there are times when it's not the efficient way to go. And at AFSC, we've dedicated 1984 as the 'Year of Efficiency'." (9:17)

The success of command implemented programs advocating competition depends upon the buying level participation, interpretation and understanding of the initiatives set forth in laws and directives. Some recently enacted laws reflect misunderstanding of the environment, methods and expected benefits of the competitive process. The contracting officer and acquisition manager must be acutely aware of the current emphasis on competitive acquisition. Planning to encourage competition throughout the acquisition process requires a systematic evaluation of opportunities and risks early in the acquisition cycle. Without careful attention to emphasize competition throughout the acquisition cycle, the window for future competitive opportunities in procuring the weapons system will be closed.

PURPOSE OF THE STUDY

The purpose of this study is to relate legislative initiatives to encourage competitive weapons system acquisition through implementation at the system program office level at Space Division, Air Force Systems Command. This study focuses on contracting officer and acquisition manager knowledge and understanding of the impact of new laws, directives, and regulations encouraging competitive acquisition. Further, this knowledge and understanding will assist Space Division Contracting Officers and Acquisition Managers to plan competitive acquisitions more effectively.

CONTINUED

acquisition procedures. Pressure is increasing to commit good business practice to law. Good practice, however, does not necessarily translate to good law. Further, these laws frequently inhibit prudent management.

5. Much of the interest in competition stems from the perception that competition will generally reduce the cost of major weapons system acquisition. This perception is unfounded. Serious faults in the methodology of previous theoretical and empirical studies of DoD acquisitions render it impossible to predict whether competing will cost more or less than not competing.

VI. Recommendations: Five recommendations support the above conclusions:

1. Contracting officers and acquisition managers at SD, and throughout DoD, should be trained immediately in practices that increase opportunities for competitive acquisition. The focus of the training should be two-fold: (1) complying with new laws; and (2) recognizing key decision points in the acquisition process where competitive opportunities are created.

2. The cost effectiveness of new acquisition policy initiatives, including competitive acquisition, should be studied.

3. Do not micro-manage programs at the highest level. The new laws invert acquisition initiatives to delegate responsibility, authority and accountability to the program manager.

4. Promote acquisition reform from within the system and advertise. There are two caveats to this recommendation: (1) good business practice does not necessarily result in good law; and (2) an effective practice in one DoD agency is not necessarily effective in another agency.

5. Establish a DoD-wide study and analysis to develop and validate cost prediction modeling on competitive acquisition strategies.

The Small Business and Federal Procurement Competition Enhancement Act of 1984: PL 98-577

The Small Business and Federal Procurement Competition Enhancement Act (PL 98-577) amends the Office of Federal Procurement Policy Act, the Federal Property and Administrative Services Act of 1949, the Small Business Act, and the Competition in Contracting Act of 1984. The purpose of the act is to eliminate procurement procedures and practices that unnecessarily inhibit full and open competition for contracts; to promote the use of contracting opportunities as a means to expand the industrial base; and to foster opportunities for the increased participation in the competitive process of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

To expand the industrial base, the act encourages the "break-out" of sub assemblies or functions from larger contracts for participation by small businesses on larger contracts, and requires contractors to identify purchased parts and supplies. Increased participation by small businesses is also promoted by changing publication criteria for procurement actions in the Commerce Business Daily. A more detailed synopsis of the Act is presented in Appendix E.

SUMMARY

Congress has demonstrated an intense interest in controlling Government, and more specifically, DoD acquisition policies and procedures regarding competitive acquisition. This interest was graphically illustrated in three recent legislative acts. By due process, the legislative bodies are limiting business options in an extremely dynamic acquisition process. The new legislation focuses on competition contracting procedures without demonstrating a clear understanding of the fundamental complexity of the DoD acquisition environment. This lack of understanding is compounded by the uncertainty that competition theory can predict when cost savings will result from competition. DoD contracting officers and acquisition managers are required to comply with laws prescribing competition, and must concurrently exercise good business judgment. A successful and legitimate acquisition strategy can only be accomplished by understanding the intent and letter of new laws and how they are to be implemented.

Chapter Three

THE ACQUISITION PROCESS: A SPACE DIVISION MODEL

INTRODUCTION

This chapter provides an overview of the Space division acquisition process in the form of a flowchart. The flowchart is a rudimentary model of the events and activities that form decision points in the acquisition process. While other AF or AFSC "buying divisions" may have similar procedures, the model for this research report is derived from Space Division regulations and directives, and discussions with acquisition managers and contracting officers at Space Division. The conclusions drawn from this model may not, therefore, be generalized to other agencies or organizations.

CHARTING THE ACQUISITION PROCESS AT SD

There are many methods of flowcharting the acquisition process. The Office of Federal Procurement Policy characterized the acquisition process as shown in Figure 1. (28:1) While this illustration is descriptive of the overall process, it fails to develop a feel for management activities and time consumed by the acquisition process. The model shown in Figure 2, identifies the schedule and activity for the "acquisition planning," "procurement planning," and "source selection" functions illustrated in the OFFPP flowchart. The schedule of events, and the time allotted for activities, is generalized from a survey of Space Division acquisitions, and parallels that described in the SD Contracting and Acquisition R&D Buyer's handbook. The process has been elongated to reflect current estimates of activity duration. The acquisition process, illustrated in Figure 2, with its maze of approvals and documents is confusing and frustrating even to the most experienced. Awareness of the acquisition network of events and activity times is important to acquisition managers and contracting officers involved in managing either competitive or noncompetitive acquisitions. The key to managing competitive acquisitions, however, lies in knowledge and understanding of a few key decision points in the acquisition cycle.

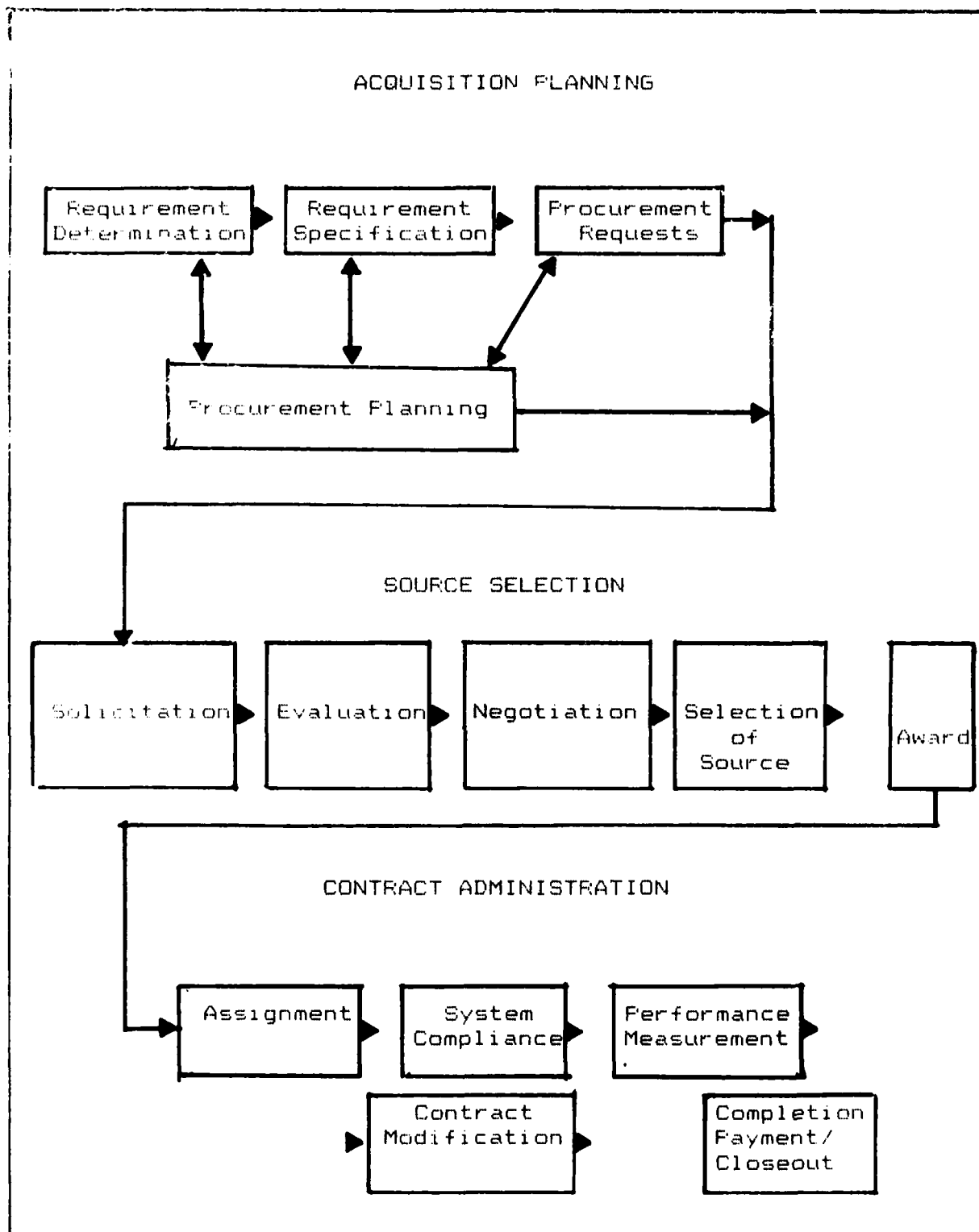


Figure 1. FEDERAL PROCUREMENT PROCESS

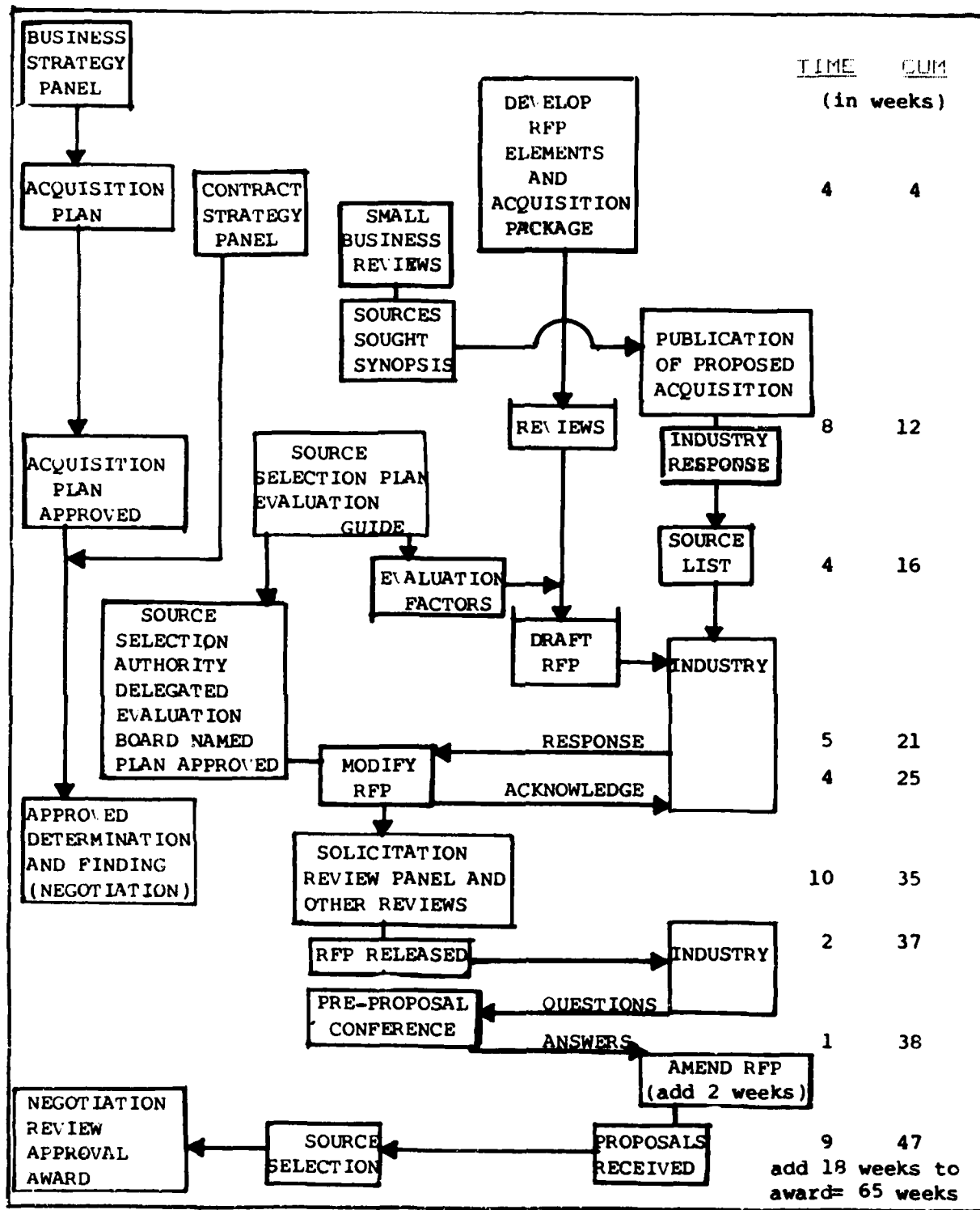


Figure 2. COMPETITIVE ACQUISITION PROCESS

KEY DECISION POINTS

The key decision points are opportunities within the acquisition cycle to create or define competition in a program. These decision points for a typical competitive acquisition at Space division are highlighted in Figure 3. This figure, like Figure 2, depicts a dollar value acquisition which requires all activities to be accomplished. Generally, for lower value acquisitions, less activities and/or lower approval levels apply. These decision points, or interfaces in the acquisition process should be considered by acquisition managers regardless of the dollar value. The following provides a summary description of the highlighted events in a major system competitive acquisition. As depicted in Figure 3, the planning, preparation, and conduct of these events may occur concurrently.

Business Strategy Panels (BSP)

The objective of the BSP is "...to provide sufficient business planning as early as feasible in the acquisition of a product or service." (21:1) A key function of a BSP is to make the program office aware of the lessons learned from previous major system acquisitions. (21:1) The panel reviews a range of issues specific to each acquisition. Under current guidance the "...primary objectives include emphasis on competitive contracting procedures throughout the program". (21:1) Because it sits as a panel of experts on acquisition strategy, the BSP provides a unique opportunity for the program office to consider competitive acquisition strategies. To promote concern for competition, a recent change to AFR 800-35, the "AF Competition Advocate Program," specifies that "representation from the office of the competition advocate should also be considered." The membership, procedures and responsibilities of the BSP are described in AFR 70-14, and AFSCR 70-2.

Contract Strategy Paper (CSP)

The CSP details the findings of the BSP and documents the acquisition strategy to be employed on contracts requiring AFSC level approval. Its purpose is to insure that the program office is implementing current contracting and acquisition policies. Topics covered in the CSP include the acquisition strategy, risk analysis, contract type, warranties, and profit analysis. At SD, the CSP is "staffed" using the AF Form 1768, Staff Summary Sheet. (27:Item No. 75)

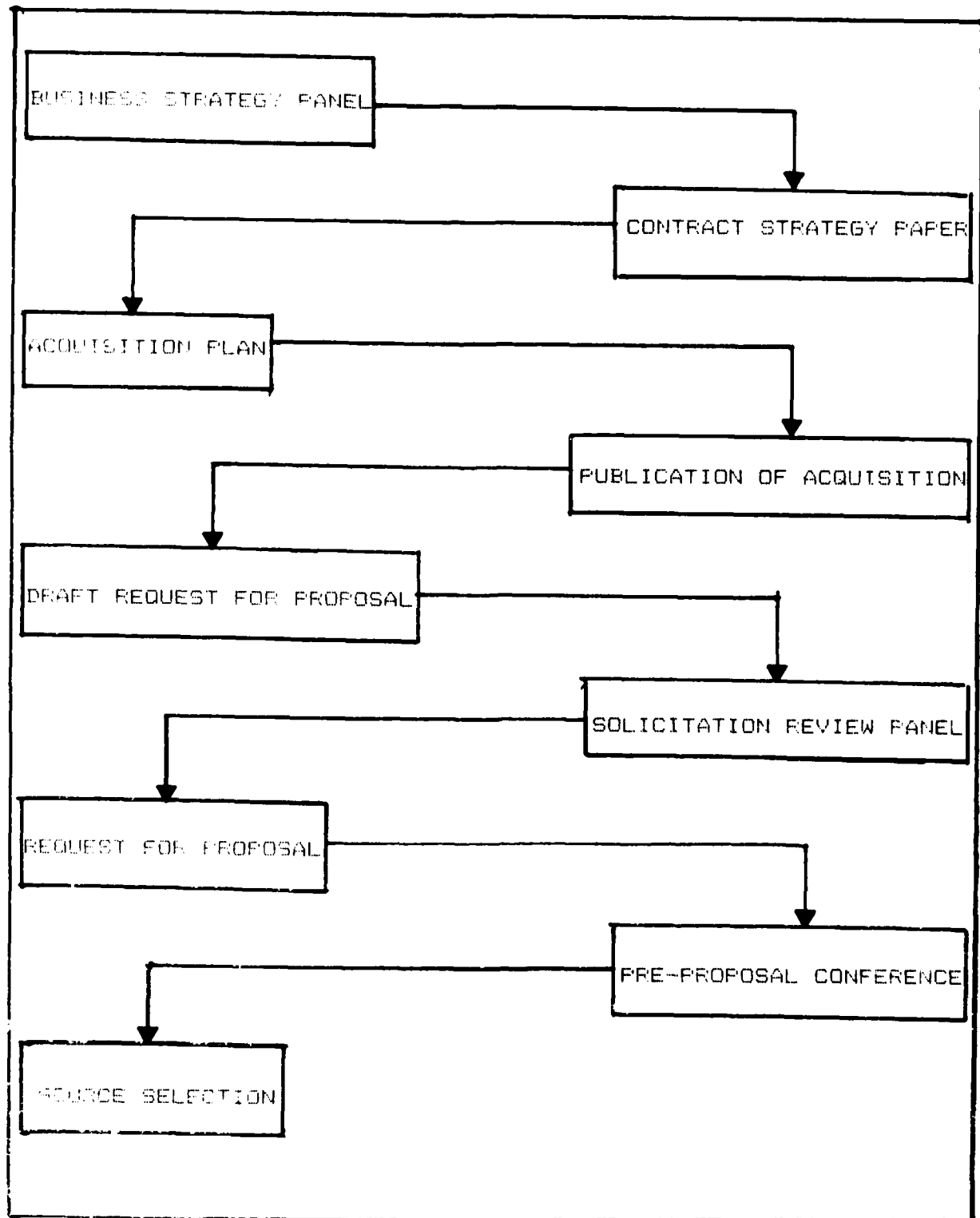


Figure 1. KEY DECISION POINTS

Acquisition Plan (AP)

The AP is a key long-range contract planning document, with its origin in both the Program Management Plan (PMP), the program director's charter from AFSC, and the BSP. Whereas the PMP describes the entire program, the AP details how it is to be contracted for. An AP is prepared for a new program to detail how the program technical, business, policy, and operational goals are going to be met through the contracting process. As each milestone is reached in the program, and the requirement for new contracts is generated, the AP is updated to reflect current program objectives. Until PL 98-369, the AP was used to support the request for "Secretarial Determination and Finding" authorizing acquisition by negotiation. These determinations, for competitive proposals, should no longer be required, but the need for long range planning-- the AP-- will most likely remain. The source for the AP is the Defense Acquisition Regulation (DAR), 1-2100, and the Federal Acquisition Regulation (FAR), Part 7, as supplemented by AFSC and SD.

Publication of Acquisitions

One requirement for nearly all acquisitions is publication of the intended acquisition in the Commerce Business Daily. The requirements for publication are detailed in the OFFP Act (41 USC 403) and the Small Business Act (15 USC 637), and repeated in the DAR 1-1003 and 1-1005, and FAR, Part 5, as supplemented by AFSC and SD. Another form of public notice is the "Presolicitation Notice and Conference" (FAR 15.404), which provides a forum for the program office to present a proposed acquisition to interested potential offerors before the request for proposal (RFP) is issued. Especially for small acquisitions or new efforts, publicizing "proposed acquisitions" and RFPs may have a dramatic impact on the competitive interest. For mature, or large programs, however, the field of interested contractors is generally limited by market forces.

Draft Request For Proposal (DRFP)

The Draft RFP gives potential contractors and interested agencies an opportunity to comment on the content and form of the draft. The Draft RFP comments must be reviewed and responded to by the program office. Feedback on the draft from interested parties can result in significant cost savings and program improvements by deleting unnecessary requirements. The draft RFP process also creates a forum which may attract additional competitors to the acquisition. The draft RFP requirements are described in DAR 3-550, as supplemented by AFSC, and FAR 15.405-1 under solicitations for planning purposes.

Solicitation Review Panel (Murder Board)

The murder board is convened to evaluate RFPs before they are released to industry. The thresholds and command levels for the murder board are described in AFSCR 70-7. The board checks the approved contract strategy paper, studies all documentation, and makes recommendations. When a competitive acquisition is involved, the contents of the RFP can have a substantial impact on the degree of competition. While the major players at the murder board represent many major functional areas at AFSC, competition and the contracting strategy are major considerations.

The Request For Proposal (RFP)

The planning, review and publication process for the RFP is described in the paragraphs above. An aspect of the RFP that impacts competition is the way the government states requirements. Over-specification, or limiting alternative proposals has the affect of limiting the number of potential sources. One of the items of interest during the RFP reviews is the requirements specification, or Statement Of Work (SOW). The SOW defines the effort needed by the government and, controls this effort through the specifications and technical documents. AFSC guidance describes the SOW as "...definitive enough to protect the governments interest, yet broad enough to allow for the contractor's creative effort to be added to the program." (26:3-1) The RFP contents are covered under the "Uniform Contract Format," FAR 15.406.

Pre-Proposal Conference

The pre-proposal conference is often advisable for competitive acquisitions. The conference provides feedback from prospective offerors on how well they understand the RFP package. While the conference does not relate to competition directly, it improves communication of the government's requirements, and may improve the quality of competitive proposals. A particularly useful feature of the pre-proposal conference is that it allows for written questions and answers (a double-edged sword, because the questions may result in amendment of the RFP and delay the contracting process). The conference is detailed in DAR 3-504, FAR 15.409, and SDR 70-2.

Source Selection

The objective of the source selection process is to "...select the source whose proposal has the highest degree of

credibility and whose performance can be expected to best meet the government's requirements at an affordable cost". (23:3) To meet this objective, the process must be tailored to the acquisition. When tailoring the source selection process, contracting officers and acquisition managers must insure the procedures used are equitable and understood by the offerors. The Source selection process is described in FAR 15.6, and detailed in AFR 70-15, as supplemented by AFSC and SD.

Acquisition Methodology

In addition to the opportunities offered to adopt competitive acquisition strategies at key decision points in the process, certain procedures, or methods, may affect the level of competition or competitive interest. These methods may be employed throughout the acquisition life cycle to increase opportunities for competing future program requirements. The methods used may be specified in the acquisition plan or become part of the strategy during almost any of the key decision points. Techniques for creating competition in follow-on acquisitions include second-sourcing provisions specifying technical data ("reprocurement data") packages, direct-licensing, leader-follower, form-fit-function, or contractor teaming. (11:30) Additionally, the philosophy adopted by a program manager may limit competitive opportunities. These limits may be defined by national security considerations, or restrictive specifications (a comprehensive review of impediments to competition is included in Appendix B). (17:1) Thus, business judgments early in the acquisition planning phase may affect the level of competitive acquisition included in the program.

SUMMARY

The complexity of the acquisition process depends on the reviewer's perspective. From the top level, the process spans the planning phase through source selection and contract administration. When the process for a single acquisition is dissected to reveal the intricate activities and events taking place within the program office, the complexity and exhaustive duration of the process is exposed. This process, assuming a one contract acquisition, includes a network of activities and events stretched over an approximately 18 month period. Many of these events run concurrently, and not all activities affect the level of competition directly. To most effectively meet new goals for competitive acquisition, contracting officers and acquisition managers should focus on the key decision points in the process. These key decision points are opportunities to make business judgments about the desired level of competition in the program.

Chapter Four

APPLYING THE MODEL: A SURVEY OF IMPACT

INTRODUCTION

This chapter bridges the gap between the the new laws on competitive acquisition and the SD acquisition process. Most of the provisions of PL 98-369, the "Competition in Contracting Act of 1984", and PL 98-577, the "Small Business and Federal Procurement Competition Enhancement Act of 1984", do not become effective until 1 April 1985. By this date, the OFPP and the DoD are tasked to publish regulations implementing the new laws, including an update to the Federal Acquisition Regulation. The discussion that follows is, therefore, a theoretical preview of the impact of the laws on the SD acquisition process. For clarity, the impact survey is structured to correlate to the previous chapter. The key decision points in the acquisition cycle are covered one-by-one with a discussion of impact. The discussion by decision point is completed with an overall assessment acknowledging that key decision points are interrelated, and affected by acquisition philosophy.

ASSESSING THE IMPACT

The basic intent of Public Laws 98-72, 98-369, and 98-577, is to declare a statutory preference for "full and open competition" as the method of federal acquisition. To promote competitive acquisition, the laws provide changes that are both substantive and procedural. A major substantive change is the recognition that "competitive proposals" (competitive negotiation) are the equivalent of "sealed bids" (essentially, formal advertising) as a "competitive procedure." The alternative to "competitive procedures," is "sole source" acquisition, which includes follow-on contracts. Prior to PL 98-369, the Armed Services Procurement Act recognized two methods of acquisition, "formal advertising," and "negotiation."

Under this dichotomy, "formal advertising" was declared the preferred method. Redefining competition should correct the common misconception that "8 per cent of DoD contracts"--those contracts let by formal advertising-- "are awarded competitively." (3:75) While seemingly minor, without this change in definition, competitive negotiations--another 22 per

cent of DoD contracts--were inaccurately lumped under negotiated procurement." (3:75)

In addition to the change in definition, the provisions of the new laws on competition affect each of the key decision points in the SD acquisition cycle presented in the previous chapter. The following discussion focuses on the impact on each decision point.

Business Strategy Panels (BSP)

The BSP will be affected most directly by the participation of the competition advocate established by PL 98-369, and implementing directives such as DODD 4245.9 (Competitive Acquisitions), and AFR 800-35 (Air Force Competition Advocate Program). The charter of the competition advocate program is to "challenge barriers to and promote full and open competition in procurement. (13:98 STAT. 1198) The relationship of contracting officers and acquisition managers to the competition advocate is illustrated in AFR 800-35: "There may be situations where competition is not possible or does not make good, common sense.... Personnel must use judgment when determining when competition will not be in the best interests of the Air Force. The reasons... must be well documented." (20:1) Another advocacy program which will affect the BSP is the "breakout procurement center representative" established by PL 98-577. The charter of the "breakout" representative includes competition advocacy, with special emphasis on barriers to competition caused by restricted rights in technical data, or "acquisition method coding." (15:98 STAT. 3081) Aside from establishing the advocacy programs, the overall impact of new laws on the BSP is that an "other than competitive contract" may not be justified, "on the basis of the lack of advanced planning..." or lack of manpower. The incentive to not compete an acquisition, in order to shorten the acquisition process (synopsis-RFP-source selection-negotiation-award) is removed by elevating review and approval levels--to AF/RDC for contracts of \$10 million or more. Public Laws 98-72 and 577 also prescribe approval by the "head of a procuring agency" to enter into a "sole source" contract of \$1 million in 1984, decreasing to \$300 thousand in 1986. To summarize the impact of competition legislation, contracting officers and acquisition managers must plan for competitive acquisition to the "maximum practicable extent." (20:1) There will also be more players in the planning process reviewing the short and long term opportunities for competition. Further, PL 98-369 directs procurement planning to, "...specify an agency's needs and solicit bids or proposals in a manner designed to achieve full and open competition," and use advance planning and "market research." (13:98 STAT. 1191)

Contract Strategy Paper (CSP)

The CSP should document the short and long term opportunities for competition as resolved at the BSP. If a noncompetitive acquisition strategy is adopted, it must be well documented.

Acquisition Plan (AP)

The requirement for the AP does not change. The AP should be consistent with the Program Management Plan, and the findings of the BSP. It is essential that the AP address competition. The use of the AP to support secretarial determinations and findings authorizing acquisition by negotiation should be deleted for competitive proposal procedures under the provisions of PL 98-369. (13:98 STAT. 1186)

Publication of Acquisitions

The requirement to "synopsise," or publish proposed acquisitions in the Commerce Business Daily is addressed in all three of the new laws. PL 98-72, by amending the Small Business Act (15 USC 637), requires publication of all proposed competitive and noncompetitive procurement actions of \$10,000 (previously \$25,000) and above, "...immediately after the necessity for the procurement has been established." (14:97 STAT. 403) Exceptions to this advance notice prescribed by 98-72, and amended by 98-577, are limited. In addition, an RFP may not be issued until 15 days after advance notice. Once the RFP is issued, the acquisition must again be synopsized. In responding to complaints that notices in the CBD were cryptic or inadequate, Public Law 98-577 provides that the notice shall include,

...an accurate description of the property or services to be contracted for, which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include a brief description of the item's form, fit or function, physical dimensions, predominant material of manufacture or similar information which will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested. (15:98 STAT. 3078)

The synopsis must also state whether technical data to respond to the RFP will be provided, and whether contractor qualifications are required. Proposal submittal deadlines cannot be less than 30 days after notice of proposed procurement. For research and development efforts, the proposal due date must be at least 45 days after notice. Contract awards

over \$25,000 must be synopsisized if subcontracting possibilities exist. The intent of new provisions on publishing acquisitions is to attract more competition for federal acquisitions, especially participation by small business concerns.

Draft Request For Proposal (DRFP)

The DRFP is not required for most acquisitions, but should be considered as a step toward clarifying and simplifying the RFP. This step becomes extremely important as more DoD acquisitions are competed. The DRFP provides an interface with the field of competitors, and an opportunity for the program office to respond to their concerns. The DRFP process does add time to the acquisition cycle--about 60 days, considering distribution, comments and responses--but may more than make up for the delay by streamlining the source selection process, resulting in more responsive proposals, reducing discussions with offerors, averting the need for amendments to the RFP and extended proposal response times, shortening negotiation time required to correct proposal deficiencies prior to contract award, and avoiding protests over the award. In short, increasing the emphasis on competitive acquisition, especially for complex systems where it is difficult to define program office needs, makes dialogue with potential contractors more important. The DRFP process provides a structured opportunity for dialogue which can improve the quality of the RFP, and hence, the contract, and broaden the field of interested contractors.

Solicitation Review Panel (Murder Board)

The murder board reviews the RFP and contracting strategy. During this review, increased emphasis on competitive acquisition is the rule. Contracting officers and acquisition managers should anticipate participation by competition advocates and the "breakout" procurement representative. The RFP (DRFP under some circumstances) will be reviewed in terms of future opportunities for competition as well as the instant buy. One of the areas under scrutiny, addressed in PL 98-577, will be "rights in technical data," and "technical data packages" for programs with follow-on acquisitions, or spares production. (18 USC STAT. 3074) Where opportunities are present for follow-on effort, the RFP should support plans for follow-on competition and requirements for prime contractors to compete awards to subcontractors. (20:1)

Request For Proposal (RFP)

In an effort to control competitive proposal procedures, Congress focused on two areas of the RFP: the specifications, and the description of the source selection and evaluation procedures included in the RFP. In an effort to broaden competition by reducing restrictive specifications, PL 98-369 provides that solicitations shall include specifications which, "permit full and open competition." The specifications, consistent with DoD needs and the market environment, may be stated in terms of function, performance, or design requirements. (13:98 STAT. 1191) To clarify how the proposal is to be evaluated, PL 98-369 prescribes that competitive proposals shall be evaluated solely on the basis of "factors specified in the solicitation." Proposals may be resubmitted as a result of discussions conducted for the purpose of minor clarification. To encourage offerors to submit a responsive offer initially, PL 98-369 directs that a solicitation for competitive proposals shall also include a statement that proposals are intended to be evaluated with discussions with offerors before award, but award may be made without discussions. Discussions, written or oral, are conducted with all responsible sources who submit proposals within the competitive range, "considering only price and other factors included in the solicitation." The award of the contract shall be made to the responsible source whose proposal "is most advantageous to the United States, considering only price and the other factors included in the solicitation." (13:98 STAT. 1192) The language used in this section of the law is reminiscent of the "four-step" source selection procedures covered in DAR 4-107. The overall impact of PL 98-369 on the RFP (for competitive proposals) is a charter to increase the competitive interest by opening-up government-offeror dialogue throughout the evaluation process. This interface should reduce barriers to competition caused by misunderstanding of the government's needs.

Source Selection

The impact on the source selection process is covered under the discussion of the RFP. The challenge to contracting officers and acquisition managers is to tailor the evaluation factors to the acquisition and accurately present those factors in the RFP. This becomes especially important because the source selection procedures, and award criteria, are now a matter of law. This differs from before, when the procedures were prescribed by regulation. Inadvertant violation of the law during source selection proceedings could result in protest by an offeror. If there is recourse, especially outside the DoD appeals process, contract award may be withheld indefinitely. The potential for serious program interruption makes the need

APPENDIX

APPENDIX A

GLOSSARY

The following is a working glossary tailored to the content of this research report. It is intended to enhance understanding of the terms used, and is not a comprehensive lexicon of competitive acquisition.

Acquisition: The purchase of supplies and services to support the needs of an organization. The term acquisition when applied to government purchasing refers to a comprehensive range of functions including program management, contracting, planning, engineering management, contract administration and others.

Acquisition Cycle: The phases of a weapon system acquisition beginning with defining operational needs through production and deployment. The process is developed to include management reviews at the end of each development phase. The acquisition cycle is described in DoDD 5000.1, Major System Acquisition, DoDI 5000.2, Major System Acquisition Procedures, and Office of Management and Budget (OMB) Circular A-109, Major System Acquisitions. (19:1)

Bid: A formal written offer to an Invitation For Bid (IFB). The "bid" in the context of DoD acquisition was formerly in response to a "formally advertised" procurement. The term "formal advertising" is replaced by "solicitation for sealed bids", b. PL-369.

Competition: See PL-369 definition of "full and open competition." In the classic definition of pure competition, price is determined by the forces of supply and demand alone, not the actions of either buyers or sellers. (4:92)

Competitive Procedures: Defined by PL-369 as, "...procedures under which the head of an agency enters into a contract pursuant to full and open competition." (13:98 STAT. 1136)

CONTINUED

Read, Phil., Chuck Jarrett, Kenneth I. Jeffries, Tom Whelan, Stanley Dees, and David Freeman. "Legislation and Regulations," Contract Management, Issue 8, Vol. 24 (August 1984), pp. 32-33.

Skantze, Larry (.), Gen, USAF. "New AFSC Commander Skantze: What He Intends to do about a 'Significant Morale Problem'," Government Executive, Vol. 16, No. 9 (October 1984), pp. 9-11.

Thayer, Paul. "The Grace Commission and Defense Acquisition," Defense 84. Washington, DC: American Forces Information Service, January 84, pp. 2-7.

Official Documents

Department of Defense. Competitive Acquisitions. DoD Directive 4245.9. Washington, DC: Office of the Deputy Secretary of Defense, 17 August 1984.

Department of Defense. Defense Acquisition Regulation. Washington, DC: Government Printing Office, 15 August 1982.

U.S. Department of the Air Force, Air Force Systems Command. Acquisition Management: Statement of Work Preparation Guide. AFSCF 800-6. Washington, DC: Hq Air Force Systems Command, 18 August 1972.

U.S. Office of Management and Budget. Major System Acquisitions. OMB Circular A-109. Washington, DC: Government Printing Office, 5 April 1976.

U.S. Office of Federal Procurement Policy. Federal Acquisition Regulation. Washington, DC: Government Printing Office, 1 April 1984.

CONTINUED

Other Sources

33. Fordham University School of Law. Competition in Contracting: The New Implementing Regulations. Seminar course offered in March 1985.
34. National Contract management Association. Competition-- The Law of the Land. Seminar course advertised in Contract Management, Issue 1, Vol. 25, January 1985, p. 4.
35. Technical Marketing Society of America. Updates and Strategies for 1985... FAR. Seminar Course advertised in Contract Management, Issue 1, Vol. 25, January 1985, p. 24.

B. RELATED MATERIALS

Books

- Fox, J. R. Arming America: How the U.S. Buys Weapons. Cambridge, MA: Harvard University Press, 1974.

Articles and Periodicals

- Baker, Norman L. "Procurement Competition Enhancement Bill Sent to President," Defense Daily. Washington, DC: Space Publications, Inc., 16 October 1984, p. 229.
- Department of Defense. "Meeting the Challenges: Sec Def's Annual Report," Defense 84. Washington, DC: American Forces Information Service, March 1984, pp. 1-27.
- Marsh, Robert T., General, USAF. "Air Force General Looks at Current Trends in Congressional Legislation," Contract Management, Issue 7, Volume 24 (July 1984), pp. 14-15.
- Mollins, James F., General USAF. "Spare Parts and Competition: Redressing Yesterday's Neglect," Defense Management Journal, Vol. 20, No. 3 (Third Quarter 1984), pp. 7-7.

CONTINUED

25. U.S. Department of the Air Force, Air Force Systems Command. AFSC Solicitation Review Panel. AFSCR 70-7. Washington, DC: Andrews Air Force Base, 2 May 1980.
26. U.S. Department of the Air Force, Space Division, AFSC. Acquisition Management: Statement of Work Preparation Guide. SDF 800-6. Los Angeles, CA: Hq Space Division, 4 April 1980.
27. U.S. Department of the Air Force, Space Division, AFSC. Contracting and Acquisition: R&D Buyer's Handbook. Los Angeles, CA: Hq. Space Division, 5 March 1982.
28. U.S. Office of Federal Procurement Policy. Federal Procurement Process. Washington, DC: Government Printing Office, 16 November 1983.
29. U.S. Office of the Federal Register, National Archives and Records Service, General Services Administration. "Federal Procurement Reforms," Weekly Compilation of Presidential Documents. Washington, DC: Government Printing Office, 19 March 1982.
30. U.S. Office of Management and Budget, Office of Federal Procurement Policy. Proposal for a Uniform Federal Procurement System. Washington, DC: Government Printing Office, 26 February 1982.
31. Weinberger, Caspar W., Secretary of Defense. Report of the Secretary of Defense Caspar W. Weinberger to the Congress on the FY 1985 Budget, FY 1986 Authorization Request and FY 1985-89 Defense Programs. Washington, DC: Government Printing Office, 1 February 1984.

Unpublished Materials

32. Ruspeh, Larry A. The General Advantages of Competitive Procurement Over Sole Source Negotiation in the Defense Department. Study prepared for the Subcommittee on Priorities and Economy in the Government of the Joint Economic Committee, Congress of the United States, 12 November 1973.

CONTINUED

17. Gordon, Harvey L. "Impediments to Competition in Contracting - Information Memorandum," Memorandum for Under Secretary of Defense for Research and Engineering. Prepared by the High Level Working Group/Competition commissioned by the Deputy Secretary of Defense. (undated).
18. U.S. Department of Defense. Major System Acquisition. DoDD 5000.1. Washington, DC: Government Printing Office, 29 March 1982.
19. U.S. Department of Defense. Major System Acquisition Procedures. DoDI 5000.2. Washington, DC: Government Printing Office, 8 March 1983.
20. U.S. Department of the Air Force. Acquisition Management: Air Force Competition Advocate Program. AF Regulation 800-35. Washington, DC: Government Printing Office, 12 October 1984.
21. U.S. Department of the Air Force. Business Strategy Panels. AFR 70-14. Washington, DC: Government Printing Office, 1 June 1984.
22. U.S. Department of the Air Force. Contracting and Manufacturing Newsletter. AFR Pamphlet 70-1, Volume 21, No. 2. Washington, DC: Government Printing Office, August 1984.
23. U.S. Department of the Air Force. Contracting and Acquisition: Source Selection Policy and Procedures. AFR 70-15. Washington, DC: Government Printing Office, 22 February 1984.
24. U.S. Department of the Air Force, Air Force Systems Command. AFSC Business Strategy Panel. AFSCR 70-2. Washington, DC: Andrews Air Force Base, 2 May 1980.

CONTINUED

10. Greer, Willis R. Jr., and Shu S. Liao. "Competitive Weapon Systems Procurement: A Summary and Evaluation of Recent Research," National Contract Management Journal, Vol. 17 (Winter 1984), pp. 37-47.
11. Sellers, Benjamin R., LCDR, USN. "A Model for enhancing Second Sourcing and Production Competition in Major Weapon Systems Acquisition," National Contract Management Journal, Vol. 15, Issue 1 (Summer 1981), pp. 27-40.
12. Virden, Prosper S. Jr., and James P. Gallatin, Jr. "Buying-In: The Downside of Competition," Contract Management, Issue 11, Vol. 24 (November 1984), pp. 5-7.
13. West Publishing Co. "98th Congress--Second Session: Deficit Reduction Act of 1984," United States Code Congressional and Administrative News, No. 6 (August 1984), pp. 1175-1203.
14. West Publishing Co. "97th Congress--Second Session: Commerce Business Daily," United States Code Congressional and Administrative News, Vol. 2 (November 1983), pp. 403-405.
15. West Publishing Co. "98th Congress--Second Session: Small Business and Federal Procurement Competition Enhancement Act of 1984," United States Code Congressional and Administrative News, No. 10 (December 1984), pp. 3066-3087.

Official Documents

16. Congress of the United States. "Small Business and Federal Procurement Competition Enhancement Act," Congressional Record: Proceedings of the 98th Congress, Second Session. Washington, DC: Government Printing Office, 4 October 1984, pp. 13611-13625.

BIBLIOGRAPHY

A. REFERENCES CITED

Books

1. Beckstead, Robert W., with Charles J. Hitch, and Roland N. McKean. Defense Economic Issues. Washington, DC: National Defense University, 1982.
2. Beldon, David L. and Ernest G. Cammack. Procurement. Washington, DC: National Defense University, 1980.
3. Gansler, Jacques S. The Defense Industry. Cambridge, MA: The MIT Press, 1980.
4. Lee, Lamar Jr., and Donald W. Dobler. Purchasing and Materials Management. New York, NY: McGraw-Hill, Inc., 1977.
5. White, Eston T. and Val E. Hendrix. Defense requirements and Resource Allocation. Washington, DC: National Defense University, 1982.

Articles and Periodicals

6. Baker, Norman L. "Air Force/Army Call for Moratorium on Acquisition Legislation," Defense Daily, 26th Year, No. 136, No. 9 (17 September 1984), pp. 68-69.
7. Connolly, Joseph H., General, USAF. "Making Federal Procurement Reform Work," Contract Management, Issue 12, Vol. 24 (December 1984), pp. 18-19.
8. Cox, Larry W. and Jacques S. Gansler. "Evaluating the Impact of Quantity, Rate, and Competition," Concepts, Vol. 4, No. 4 (Autumn 1981), pp. 29-53.
9. DeLuca, Anthony. "Why Systems Command Seeks 'Efficiency,' Not Just 'Contract Competition'," Government Executive, vol. 16, No. 7 (August 1984), pp. 17-20.

SUMMARY

The DoD acquisition process has come under fire to a degree not experienced before. Legislative interest in reforming the acquisition process, and a perception that competitive acquisition will substantially reduce DoD acquisition costs led to three recent laws declaring a statutory preference for competitive acquisition. Contracting officers and acquisition managers at all levels must be apprised of the impact of new legislation on the acquisition process. These people are key players in formulating and implementing new competition policies, as well as protecting the interests of the government through good business judgment. Good business judgment in selecting among alternative competitive and noncompetitive acquisition strategies depends on the capability to predict the cost and benefit of alternative competitive and noncompetitive acquisition strategies. To improve current cost prediction models, data on competitive and noncompetitive acquisitions must be collected and analyzed DoD-wide. Competition has become the "law of the land" in DoD acquisition. Early planning to incorporate competitive acquisition strategies will employ competitive strategies at the most cost effective program phase and reduce administrative delay.

competition in an on-going weapon system acquisition. The cost effectiveness of both competitive and noncompetitive acquisition strategies should be considered based on a data pool of lessons learned and empirical case studies of similar acquisitions.

3. Do not micro-manage programs at the highest levels. The new laws create insidious reversals of the "Acquisition Improvement Program" initiatives to delegate responsibility, authority and accountability to the program manager. The key to meeting goals for competition and other policy objectives is motivating contracting officers and acquisition managers in line organizations.

4. Promote acquisition reform from within the system and advertise. The process of identifying and correcting inefficiencies is becoming institutionalized. The capability to correct deficiencies in the DoD acquisition process lies within. What is needed is an on going effort to advertise acquisition improvements to those legislators who are pursuing external reform. Two caveats to this recommendation are absolutely essential: (1) good business practice does not translate to good law; and (2) an effective business practice in one DoD agency is not necessarily effective in another agency. Both of these caveats should be considered when advertising.

5. Debunk the faulty methodology underlying studies citing the universal cost effectiveness of competition. This does not imply competition is not beneficial or cost effective. It does imply that previous theoretical and empirical studies that form the core of pro-competition arguments are faulty and/or incomplete. A DoD-wide data collection and comprehensive analysis should be conducted to validate or improve cost prediction modeling of competitive acquisition strategies. This is a logical extension of recommendation two. The qualitative and quantitative factors that most affect competition must be determined through study at the DoD level. Once this determination is made, program offices will be able to collect pertinent data for decision-making. The analysis should further define the correlation of qualitative factors such as profitability, excess industry capacity, general business conditions and extent of subcontractor effort to price performance under competition. The research by Greer and Liao of the Naval Post Graduate School is an initial step in the direction of a quantitative reevaluation.

5. The interest of legislators in DoD acquisition reform can be traced through years of debate on how to "fix" the acquisition process. There is a genuine need for acquisition reform, including the re-emphasis of competition. The impression of many reform activists, however, is that increasing competition has a direct correlation to cost savings. This impression is, at best, inaccurate, but it is supported by empirical studies conducted over two decades on dozens of DoD programs. Current studies on competition, such as the seminal work by Greer and Liao, "Competitive Weapon Systems Procurement: A Summary and Evaluation of Current Research," expose methodological weaknesses in previous studies and suggest that, "competition has resulted in added life cycle costs almost as often as it has produced savings." (10:37) The AF, and DoD in general, have not confronted inaccurate assumptions on the merit of competition with serious study of what market systemic and industry factors are most closely correlated to cost savings through competition. The objectives of this proposed study, to develop and validate a comprehensive theory of competition, will not be met by the collection of examples and savings estimates set forth in AFR 800-35. (20:3)

RECOMMENDATIONS

1. Contracting officers and acquisition managers at SD, and throughout DoD, should be trained immediately in practices that will increase opportunities for competitive acquisition. The focus of this training should be two-fold: (1) complying with new laws; and (2) recognizing the key decision points in the network of activities and events in the acquisition process where competitive opportunities are created--a "systems approach"--tying new responsibilities to the acquisition cycle network. Outside DoD, industry is already responding to the need. A national contract manager's professional organization is conducting training sessions for industry. (33:1, 34:4, and 35:24)

2. Study groups should be created at the DoD level to consider the general cost effectiveness of new acquisition policies. The study groups should support findings with evidence, such as when competition is cost effective, that legislators and DoD officials can agree upon as representative of sound business practice. To reinforce sound business practices, compliance with new laws, such as statutory requirements for competition, must be balanced with investigation of the cost effectiveness of compliance. Contracting officers and acquisition managers should be provided the tools to evaluate each acquisition on its own merits. The full range of competitive acquisition strategies should be considered, including the timing of when to recreate or impose

functions that did not adequately address competition.

2. The new laws enacted to reform the DoD acquisition process will not result in savings if pursued without sound business judgment on the part of contracting officers and acquisition managers. The laws must be complied with, but do not supplant common sense, experience, and stewardship of taxpayer dollars. In general terms, the legislation will increase the acquisition/contracting cycle, and increase the administrative burden. Planning and documentation must accommodate new requirements for competition throughout the acquisition cycle. To pursue an other-than-competitive acquisition strategy must be supported by overwhelming evidence and will not reduce the administrative time required to process the acquisition.

3. The key to reforming the acquisition process lies in the line organization--the people responsible for the day-to-day activities in the acquisition process. Without the support and creativity of the professional line organization, acquisition reforms will not increase the effectiveness or efficiency of DoD defense spending. The training and motivation of these acquisition professionals is of paramount importance. An important distinction in this light is that more information or regulation is not the equivalent of training, and is not conducive to quality performance. One is reminded of an automobile manufacturer's advertisement which conceded that quality cannot be inspected into a product, it must be engineered and built into the product. Thus, the contracting officers and acquisition managers responsible for business decisions must be motivated to "build-in" policy goals, such as competitive acquisition, to acquisition strategies.

4. The new laws reforming the DoD acquisition process are the "tip of the iceberg." Pressure is increasing to commit sound business practice to law. Good practice, however, does not necessarily translate to good law. Sections of the new law may be technically unenforceable, such as "rights in technical data" on commercial components or subsystems. Other sections, such as higher review and approval levels and institutionalized advocacy offices add to administrative burden and processing time. Concomitantly, these laws imply the DoD acquisition community line organization is incapable of, or opposed to competent business practice. This premise is simply unfounded. There is a need for the DoD acquisition community to be sensitive to inefficiency, but the capability to repair the inefficiencies are found within DoD. It should be recognized that mistakes, some costly in relative terms, will continue to be made as part of a learning process. Because each acquisition presents a unique set of circumstances, contracting officers should have the latitude, within policy guidelines, to adapt lessons learned and apply sound business principles.

Chapter Five

CONCLUSIONS AND RECOMMENDATIONS

INTRODUCTION

This chapter presents conclusions and recommendations resulting from research on current legislation directed at increasing competition in the DoD acquisition process. The presentation is broadened to include conclusions and recommendations beyond the scope of the SD acquisition process. It is assumed that the acquisition process at SD must be conformed to new requirements as a matter of law. The impact of current legislation, however, may be extrapolated to AFSC, and DoD. It is at the higher levels that regulations and directives will be conformed to accommodate new laws, and it is to these levels that some of the conclusions and recommendations are targeted.

CONCLUSIONS

Five conclusions evolved from research on current legislation concerning competitive acquisition, and the SD acquisition process:

1. The acquisition process is uniquely tailored to each acquisition. Tailoring is generally a function of the dollar value or visibility of the program involved. While the concept of the "acquisition process" applies over the entire life-cycle of the program from concept through production, deployment and support, it is most useful to examine competitive acquisition by highlighting key decision points in the acquisition process through contract award. Despite minor variation in each acquisition, the process may be approached as a network of activities and events over a 12-18 month period. This perception is extremely important to contracting officers and acquisition managers tasked to complete an acquisition. The new laws and implementing directives and regulations will affect the plans and procedures contracting officers and acquisition managers must cope with. Understanding the impact of new legislation on the acquisition process is of vital importance to these managers. Failure to adapt to new requirements will consume time and money to recapitulate planning or approval

require a contractor to identify supplies that it did not manufacture or to which it did not contribute significant value. The revision must also specify the "incurred overhead a contractor may appropriately allocate to such supplies." (15:98 STAT. 3085)

SUMMARY

Through recent legislative enactments, competition has become the "law of the land" for DoD acquisitions. The new laws, PL 98-72, amendments to the Small Business Act, PL 98-369, the Competition in Contracting Act of 1984, and PL 98-577, the Small Business Enhancement and Federal Procurement Reform Act of 1984, prescribe sweeping changes to the DoD acquisition process. These changes affect the SD acquisition process both directly and indirectly. Focusing on key decision points within the acquisition process reveals the direct impact of new legislation. Understanding the legal limits to noncompetitive acquisition, and the opportunities to adopt competitive strategies will aid contracting officers and acquisition managers in avoiding program delays by planning for competition early.

for Staff Judge Advocate participation in the source selection proceedings imperative.

OTHER CONSIDERATIONS

Acquisition Methodology

In addition to impact on the acquisition process, the new laws are aimed at the philosophy and methods of DoD acquisition. The laws address the imperative of planning for future acquisitions in addition to the instant buy. This includes programs in which the DoD appears "locked-in" to a specific contractor. To create competition in on-going acquisitions, PL 98-369 provides for the exclusion of a particular source, under competitive procedures, "in order to establish or maintain an alternative source or sources of supply." (13:98 STAT. 1188) The exclusion must be for the purpose of increasing or maintaining competition if it results in lower cost, or establishing or maintaining an essential source of supply or capability. In echoing the planning implications of PL 98-369, AFR 800-35 identifies "multisourcing methods, (such as leader/follower, direct licensing, etc.), component breakout, and spare parts breakout" as concepts to foster competition. (20:2) The lesson to be learned early in the acquisition process is that noncompetitive acquisitions will be severely limited by policy, and will require extensive processing through approval levels.

Other Provisions Fostering Competition

Some of the provisions of PL 98-577 have a less direct impact on the acquisition process. These indirect provisions include government "rights in technical data," guidance on acquisition personnel evaluations, and limits on contractor overhead. The rights in data provisions basically translate previous DAR requirements to law. Briefly, the government has unrestricted rights to data resulting from exclusively government funded effort. The focus of the provision is to obtain complete and accurate technical data which may be released or used in future acquisitions to increase competition. Another area addressed is performance appraisals for government employees, "whose primary duties... pertain to the award contracts." The appraisal system must recognize efforts to, "increase competition..." and, "further the purposes of the Small Business and Federal Procurement Competition Enhancement Act of 1984 and the Defense Procurement Reform act of 1984..." (15:98 STAT. 3085) Another provision aimed primarily at reducing over-pricing, but affecting competition by surfacing potential candidates for "breakout," is the limitation on contractor overhead in PL 98-577. This provision directs the DFPP to revise FAR direction on noncompetitive procurements to

Competitive Proposals: Offers submitted by two or more respondents to the government Request For Proposal. (13:98 STAT. 1186)

Contract: An agreement enforceable by law. To be valid and enforceable, a contract must contain four basic elements: (1) agreement (a meeting of the minds) resulting from an offer and an acceptance; (2) consideration; (3) competent parties; and (4) a lawful purpose. (4:492)

Contractor: One who contracts to furnish supplies or services at a specified price or rate.

Formal Advertising: Commonly referred to (somewhat incorrectly) as "competitive procurement." It is basically the equivalent of "sealed bids," as defined by PL-369. PL 98-369 made a key change to the Armed Services Procurement Act by altering the definition of competition to include "competitive proposals" as well as "sealed bids." (13:98 STAT. 1188)

Full and Open Competition: Defined by PL-369 by amending the OFFPA Act (41 USC 403). When used with respect to a procurement, full and open competition, means "...that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement." (13:98 STAT. 1195)

Procurement: A term commonly used as a synonym for acquisition. "Procurement," as used in the Armed Services Procurement Act includes the full range of functions surrounding the purchase of supplies and services by the DoD. The term has been displaced in the AF by the term "acquisition" to broaden the concept from purchasing functions to program management in all aspects.

Responsible Source: Defined in PL-369 as,

...a prospective contractor who--

- (A) has adequate financial resources to perform the contract or the ability to obtain such resources;
- (B) is able to comply with the delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;
- (C) has a satisfactory performance record;
- (D) has a satisfactory record of integrity and business ethics;
- (E) has the necessary organization, experience, accounting and operational controls and technical skills, or the ability to obtain such organization, experience, controls, and skills;
- (F) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain such equipment and facilities; and

(G) is otherwise qualified and eligible to receive an award under applicable laws and regulations. (13:98 STAT. 1195)

Supplies: As defined in PL 98-577, by amendment to the OFFP Act. The definition is broadened to give focus to the activities of the "Breakout Procurement Center Representative" established by the law. "Item," "item of supply," or "supplies" means,

any individual part, component, subassembly, assembly or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of an 'item'. (15:13612)

APPENDIX

APPENDIX B

INHIBITORS TO COMPETITION

The following outline was developed from a Deputy Secretary of Defense commissioned High Level Working Group Study chaired by Mr. Harvey Gordon entitled Impediments to Competition in Contracting (undated). (17:1)

I. General Inhibitors to competition.

- A. Lack of time.
- B. Lack of capital investment to build production capability.
- C. Lack of DoD manpower or expertise to develop and administer a competitive acquisition.
- D. Policies which conserve manpower, money, or time at the expense of competition.
- E. Specific management direction which drives a sole source acquisition (funding, time, etc.).

II. Inhibitors in the technical and engineering functions.

- A. Poor maintenance of technical data base for programs.
- B. Inadequate audit or review of data received under contract.
- C. Inability to define precise technical requirements or specifications.
- D. Inability to define qualified sources other than the prime for subsystems.
- E. Inability to develop specifications or purchase descriptions which will encourage competition.
- F. Standardization policies, such as requirements for special tooling, which "lock in" a supplier.
- G. Use of "off-the-shelf" or commercial items may "lock in" the original supplier.
- H. Specifications for special technical data or manuals.
- I. Restrictive testing requirements.
- J. Inadequate test and acceptance specifications.
- K. Delivery of technical data before system design stabilizes.

- L. Reliance on a prime contractor to control system design or configuration changes due to lack of DoD engineering resources.
- M. Data Item Descriptions, particularly for technical data package related items are inadequate.

III. Inhibitors to competition in the program management function.

- A. Establishing near-term operational need dates.
- B. Program funding levels which precipitate choices between technical data packages and hardware or logistical support items.
- C. Late delivery of a finalized technical data package.
- D. Lack of emphasis on planning for competitive acquisition.
- E. Funding constraints which drive decisions to "stretch out" an acquisition-- reducing attractiveness to potential competitors.
- F. Selecting an acquisition strategy which opts for a sole source prime contractor for "cradle to grave" support.

IV. Inhibitors to competition in the comptroller and financial management function.

- A. Program "new starts" must be delayed until an appropriation act is signed.
- B. Lack of prompt government payment discourages suppliers.
- C. Program schedules must be aligned with funding release schedules.
- D. End of year spending practices and "fall-out money" compress acquisition schedules and discourage competition.
- E. Acquisition or program execution schedules tend to emphasize obligation rates which imply a smooth expenditure rate rather than a rate tailored to a competitive acquisition.

V. Inhibitors to competition in the Supply and requirements function.

- A. Uneconomical buy quantities, especially small annual buys, may discourage competition.
- B. Unrealistic delivery requirements which preclude potential suppliers from developing the capability to meet the requirement.
- C. Lack of "up front" logistics planning which limits opportunities to maintain competition downstream in the acquisition cycle.
- D. Customer furnished purchase descriptions which are

written for a pre-selected product.

The list of impediments to competition compiled by the DoD working group is very thorough. The allocation of barriers to competition in functional terms further facilitates use of the list by contracting officers and acquisition managers in assessing the potential for competition on a program, and focusing on potential barriers to a competitive acquisition strategy.

APPENDIX

APPENDIX C

SYNOPSIS OF PUBLIC LAW 98-72

The following is a synopsis of Public Law (PL) 98-72, which amends the Small Business Act (15 USC 637) to improve small business access to Federal procurement information. Legislative interest in amending sections of the Small Business Act was the result of a series of hearings before Congress on the participation of small business in the Federal procurement process. This synopsis focuses on the aspects of the Law pertinent to competitive contracting. Further, the synopsis is presented with the caveat that it is intended to be informational, and is not a substitute for reviewing the requirements of the Law as implemented in DoD acquisition regulations.

- I. The first paragraph of PL 98-72 prescribes publication of all proposed competitive and noncompetitive civilian and defense procurement actions of \$10,000 and above in the Commerce Business Daily,... "immediately after the necessity for the procurement has been established." (14:97 STAT. 403) Publication may be excepted if the procurement is: a) classified, b) urgent, c) a foreign military sale where the source is specified or the only one available, d) an inter- or intra-Government agency transfer, e) for sole source utility services, f) an order placed against a contract, g) acceptance of an unsolicited proposal or proposal pursuant to the Small Business Innovation Development Act of 1982, and h) determined by the "head of the Federal department" (emphasis added), with the concurrence of the Small business Administrator, that advance notice is not appropriate.
- II. If publication is required, a solicitation may not be issued until 15 days have elapsed since the date of publication. For research and development effort, 30 days are required between notice and solicitation. The Law further specifies 30 days must be allowed between publication and foreclosing competition or commencing negotiations on a sole source basis.

- III. Congress responded to complaints that the notices published in the CBD were cryptic or inadequate by prescribing that the notice include ... "a clear description of the property, supplies, or services to be contracted for, which description is not unnecessarily restrictive of competition." (14:97 STAT. 404)
- IV. An important aspect of PL 98-72 is the specification of approval levels for sole source contract negotiations. Under this law, the head of the procuring activity or his deputy, on a non-delegable basis, must approve the authority to enter into a "sole source" contract. This portion of the law, superseded by PL 98-577, specifies dollar thresholds and approval levels.
- V. If a procurement action of \$25,000 or more is likely to result in subcontracts, the award of the procurement action must be announced in the CBD.
- VI. "Sole source contract" is defined as a contract ... "for the purchase of property, supplies or services which is entered into... after soliciting and negotiating with only one source." "Unsolicited proposal" is ... "on the initiative of the submitter", and ... "not in response to a formal or informal request." (14:97 STAT. 405)

PL 98-72 amended only the Small Business Act, and did not extend the language of the amendment, such as definitions or approval levels, to the Office of Federal Procurement Policy Act, or the Armed Services Procurement Act, where they should also have been addressed. PL 98-369, and PL 98-577 do address these acts, and PL 98-577 overwrites PL 98-72 without rescinding it.

APPENDIX

APPENDIX D

SYNOPSIS OF PUBLIC LAW 98-369

Public Law 98-369 is entitled the "Deficit Reduction Act of 1984," and includes, among other provisions, the defense authorization bill. Title VII of the Act is cited as the "Competition in Contracting Act of 1984." The synopsis is informational, and is not a substitute for review of implementing directives and regulations.

The Competition in Contracting Act of 1984 covers three basic areas: a) it establishes a statutory preference for the use of competitive procedures in federal contracts; b) it requires the solicitation of sealed or competitive bids unless certain exceptions are met; and c) it directs the head of each executive agency to appoint a competition advocate, and create an advocacy program.

Provisions of the Competition in Contracting Act amend the Federal Property and Administrative Services Act of 1949 (41 USC 253), the Armed Services Procurement Act (10 USC 2304), the Office of Federal Procurement Policy Act (41 USC 403), and the Budget and Accounting Act (31 USC, Chapter 35). This synopsis will identify changes to the Armed Services Procurement Act, and the Office of Federal Procurement Policy Act. Quoted material is from the Act as published in the United States Code: Congressional and Administrative News. (98 STAT. 1175)

- I. The amendments to the Armed Services Procurement Act open with a statement of policy. The basic intent of Congress is to open the procurement process to all capable contractors who wish to do business with the Government. This policy statement does not change..."the long standing practice in which contractor responsibility is determined by the agency after offers are received. For DoD procurement, the Act prescribes a policy of "full and open competition." Defining this policy is a key provision of the Act. Under the definition of "full and open competition," "competitive proposal" procedures are placed on a par with "sealed bid procedures." The terms "competitive proposal" and "sealed bid" replace the terms "negotiation" and "formal advertising." Previous

restrictions, approval requirements, and written justification, are removed for competitive negotiation--now "competitive proposal procedures." The policy statement further directs agencies to promote competition, maintain the essential capability of the defense industrial base, incentivize contractor cost saving actions, use commercial products, and to "require descriptions of agency requirements, whenever practicable, in terms of functions to be performed or performance required." (12:98 STAT. 1186) A final policy statement, which upholds the preference for small business participation, is that a "fair proportion of the purchases and contracts...be placed with small business."

- II. The 'head of an agency' is defined as the Secretary of Defense, or the Secretary of the Air Force (or other agency). The definitions of "full and open competition" and "responsible source" are aligned with the definitions provided in the Office of Federal Procurement Policy Act, covered in paragraph VII., below.

III. Procurement procedures.

- A. The head of an agency shall obtain full and open competition, and shall use ... "the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement." Competitive procedures may be sealed bids, or competitive proposals.
- B. The head of an agency may exclude a particular source in the interest of increasing competition, to create a "second source", or to maintain an essential engineering, research, or development capability. The head of an agency may restrict solicitation to small business.
- C. "The head of an agency may use procedures other than competitive procedures only when--"
 - 1. There is only one source (an unsolicited proposal), or the procurement is a follow-on contract where second sourcing would result in higher cost or substantial delay.
 - 2. The need is urgent.
 - 3. To maintain an essential facility or capability.
 - 4. Where prohibited by the terms of a treaty.
 - 5. Where statute requires or specifies the source.
 - 6. When sources must be limited because of classified nature of buy.
 - 7. When the head of the agency, on a non-delegable basis, determines that it is necessary in the

public interest to use procedures other than competitive.

- D. Except for small business set-asides, the head of an agency may not award an "other than competitive" contract unless the contracting officer justifies the use of the procedures (the format for the justification is specified in the act). In addition to the contracting officer's justification, the award must be approved by the procuring activity competition advocate for procurements greater than \$100 thousand; by the head of the procuring activity or a delegate of GS-16 or general officer rank for awards over \$1 million; and by the senior procurement executive of the agency (for example, USAF/RDC) for awards over \$10 million.
 - E. The Act provides that an "other than competitive contract" may not be justified ... "on the basis of the lack of advanced planning or concerns related to the amount of funds available to the agency for procurement functions," or purchase from another agency unless the agency complies with the policies of the Act.
 - F. The Act permits implementing regulations to adopt simplified procedures for small purchases.
- IV. A major portion of the Act concerns the content of DoD contracts, and procedures for planning, solicitation, evaluation and award of contracts. The law does not change the procedures described by DAR, but incorporates the procedures into law. The Act begins with the planning process, directing that, consistent with the need of the agency, needs shall be specified in order to promote and achieve "full and open competition." In order to foster competitive procedures, ... "specifications may be stated in terms of...function, performance (including the range of acceptable characteristics or minimum standards), or design requirements." The Act specifies that competitive procedures may include sealed bids or competitive proposals. To ensure all competitors understand the basis for award of the contract, the basic content of a sealed bid or solicitation for competitive proposal shall include: ... "all significant factors (including price) which the head of the agency reasonably expects to consider in evaluating sealed bids or competitive proposals; and...the relative importance assigned each of those factors." For competitive proposals, the solicitation must include a ... "statement that the proposals are intended to be evaluated with, and awards made after, discussions with the offerors, but might be evaluated and awarded without discussions with the offerors; and...the time and place for submission of proposals." In evaluating the competitive

proposals, the head of an agency must base his decision ... "solely on the factors specified in the solicitation." This provision also sets forth the criteria for awarding a contract with or without discussions pursuant to competitive proposals. As a final note, the ... "head of an agency shall award a contract with reasonable promptness to the responsible source whose proposal is most advantageous to the United States considering only price and the other factors included in the solicitation."

V. The Act reverses DoD initiatives to reduce the administrative cost of submitting a proposal by requiring cost or pricing data for procurement actions over \$100,000 (from \$500,000).

VI. "Determinations" for the type of contract and use of progress payments, among others, are expanded, though not altered substantially from the previous provisions of the Armed Services Procurement Act.

VII. Amendments to the Office of Federal Procurement Policy Act.

A. Two important definitions are set forth in this section: "full and open competition," and "responsible source." Full and open competition means... "all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement." Responsible source means a prospective contractor who... "has adequate financial resources to perform... is able to comply with the proposed delivery or performance schedule... has a satisfactory performance record... has a satisfactory record of integrity and business ethics... has the necessary [capability]... has the necessary plant and equipment [and]... is otherwise qualified and eligible to receive an award under applicable laws and regulations."

B. The OFFP Act is amended to conform to the changes to the Small Business Act effected by PL 98-72 (see Appendix C).

C. In order to segregate data collection on other than competitive procurements, the General Services Administration will maintain a five year computer file on all procurements, with identifying information explaining noncompetitive procurements.

D. The head of each executive agency shall designate a competition advocate for the agency and each procuring activity. The competition advocate shall be responsible for ... "challenging barriers to and promoting full and open competition... reviewing procurement activities" and identifying and reporting actions taken to promote competition or impediments to competition. Finally, each executive agency must

report annually on the competition program.

The provisions of the Competition in Contracting Act, except those provisions amending protest procedures in the Budget and Accounting Act (not synopsized) are effective after 31 March 1985.

APPENDIX

APPENDIX E

SYNOPSIS OF PUBLIC LAW 98-577

The following is a synopsis of Public Law (PL) 98-577, which amends the Office of the Federal Procurement Policy Act, the Federal Property and Administrative Services Act of 1949, and the Small Business Act. The provisions of PL 98-577, also known as the "Small Business and Federal Procurement Competition Enhancement Act," have much in common with the changes introduced by PL 98-72, and PL 98-369. The purpose of the Small Business and Federal Procurement Competition Enhancement Act is to ... "eliminate procurement procedures and practices that... inhibit full and open competition for contracts;" promote the use of contracting opportunities to expand the industrial base; and ... "foster opportunities for the increased participation in the competitive procurement process of small business concerns."

A major portion of PL 98-577 focuses on the Federal Property and Administrative Services Act, which does not affect DoD acquisitions. The outline below is limited to those aspects of PL 98-577 related to DoD acquisitions, and competition. This synopsis is presented with the caveat that it is intended to be informational, and is not a substitute for reviewing the requirements of the law as implemented in regulations and directives.

I. Amendments to the Office of Federal Procurement Policy Act.

The Act specifies that the Federal Acquisition Regulation (FAR) shall define United States' rights in technical data evolved under contract, and remedies to be used when delivered data is inadequate or incomplete. The objective of this provision is to secure unrestricted data which may be released by the government to secure competition in follow-on purchases. Another provision gives interested parties the opportunity to challenge proposed changes to the government procurement process. This section states that no procurement policy, regulation, procedure or form relating to the expenditure of appropriated funds which will have "significant effect" may be changed by an agency unless the proposed changes are published, and a 30 day comment period is allowed. A final section of the Act

aligns the OFFP Act to the provisions of the Small Business Act as changed by PL 98-577. These provisions specify publication of awards in the Commerce Business Daily (CBD).

II. Amendments to the Small Business Act.

- A. This section directs the Small Business Administration to assign to each major procurement center a "breakout" procurement center representative. The representative is tasked to review acquisitions to evaluate opportunities to increase competition by "breaking out" components or subassemblies from large procurements, or by improving the access of interested offerors to technical data needed to bid on solicitations.
- B. Section 8(e) of the Small Business Act, as amended by PL 98-72 (see Appendix C), is completely rewritten, without substantial departure from the intent of PL 98-72. The description format for the notice of solicitation published in the CBD is expanded, the exceptions to publication are conformed with the changes to the Armed Services Procurement Act in PL 98-369 (see Appendix D), and the justifications and approvals for award of "other than competitive" contracts imposed by PL 98-369 are added to the Small Business Act.

III. Other Procurement Provisions.

Two other provisions affect competition indirectly. The first provision is an amendment to the Federal Property and Administrative Services Act which specifies that employee appraisals for personnel involved in the contracting process should recognize initiatives to increase competition. Another provision directs that the FAR be changed to specify the..."incurred overhead a contractor may appropriately allocate..." and require the contractor to identify those supplies which it did not manufacture or to which it did not contribute significant value." This Title of PL 98-577 also made technical corrections to oversights in the Competition in Contracting Act of 1984 (PL 98-369), such as allowing competitions which exclude all but small businesses.

The provisions of the Small Business and Federal Procurement Competition Enhancement Act are effective after 31 March 1985. Quoted material is from the Act as published in the United States Code: Congressional and Administrative News. (15:98 STAT. 3066)

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